

Commercial Privacy *Bill of Rights*

“The Commercial Privacy Bill of Rights Act of 2011” Summary

The Kerry-McCain *Commercial Privacy Bill of Rights Act of 2011* would establish rights to protect every American when it comes to the collection, use, and dissemination of their personally identifiable information (PII).

These privacy rights include:

THE RIGHT TO SECURITY AND ACCOUNTABILITY: Collectors of information must implement security measures to protect the information they collect and maintain.

THE RIGHT TO NOTICE, CONSENT, ACCESS, AND CORRECTION OF INFORMATION: Collectors of information must provide clear notice to individuals on the collection practices and the purpose for such collection. Additionally, the collector must provide the ability for an individual to opt-out of any information collection that is unauthorized by the Act and provide affirmative consent (opt-in) for the collection of sensitive personally identifiable information. Respecting companies existing relationships with customers and the ability to develop a relationship with a potential customers, the bill would require robust and clear notice to an individual of his or her ability to opt-out of the collection of information for the purpose of transferring it to third parties for behavioral advertising. It would also require collectors to provide individuals either the ability to access and correct their information, or to request cessation of its use and distribution.

THE RIGHT TO DATA MINIMIZATION, DISTRIBUTION CONSTRAINTS, AND DATA INTEGRITY: Collectors of information would be required to collect only as much information as necessary to process or enforce a transaction or deliver a service, but allow for the collection and use of information for research and development to improve the transaction or service and retain it for only a reasonable period of time. Collectors must bind third parties by contract to ensure that any individual information transferred to the third party by the collector will only be used or maintained in accordance with the bill’s requirements. The bill requires the collector to attempt to establish and maintain reasonable procedures to ensure that information is accurate.

Other key elements of the Kerry-McCain Commercial Privacy Bill of Rights include:

ENFORCEMENT: The bill would direct State Attorneys General and the Federal Trade Commission (FTC) to enforce the bill’s provisions, but not allow simultaneous enforcement by both a State Attorney General and the FTC. Additionally, the bill would prevent private rights of action.

VOLUNTARY SAFE HARBOR PROGRAMS: The bill allows the FTC to approve nongovernmental organizations to oversee safe harbor programs that would be voluntary for participants to join, but would have to achieve protections as rigorous or more so as those enumerated in the bill. The incentive for enrolling in a safe harbor program is that a participant could design or customize procedures for compliance and the ability to be exempt from some requirements of the bill.

ROLE OF DEPARTMENT OF COMMERCE: The Act directs the Department of Commerce to convene stakeholders for the development of applications for safe harbor programs to be submitted to the FTC. It would also have a research component for privacy enhancement as well as improved information sharing.